

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	Civil Action No. 07-H-0102-S
v.	:	
	:	
COMPASS BANK,	:	
	:	
Defendant.	:	

Consent Order

I. INTRODUCTION

1. This Consent Order (the “Agreement”) resolves the claims of the United States that Compass Bank (“Compass” or “the Bank”) has violated the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f (“ECOA”), and its implementing regulations located at 12 C.F.R. Part 202 (“Regulation B”). The United States alleges that Compass Bank’s automobile lending policies and practices in its Dealer Financial Services Department (“DFS”) , between May 2001 and May 2003, discriminated on the basis of marital status in violation of ECOA, 15 U.S.C. §§ 1691(a)(1), and Regulation B, 12 C.F.R. 202.4 and 202.2(n) and 202.6(b)(8).
2. Under the provisions of this Agreement, Compass Bank has committed to make dealer financing available on an equal basis to similarly-situated spousal and non-spousal consumers. Specifically, Compass Bank will ensure that the terms or conditions relating

to the extension of credit, including the setting of buy rates¹ for loans to purchase automobiles, are made available on no less favorable terms to unmarried co-applicants than to married co-applicants.

3. Compass Bank denies the United States' allegations that it engaged in marital status discrimination and maintains that at all times it conducted its lending in compliance with the letter and spirit of fair lending laws and in a non-discriminatory manner.
4. There has been no factual finding or adjudication with respect to the matter alleged by the United States. Accordingly, the execution of this Agreement is not, and is not to be considered as, an admission or finding of any violation of the ECOA by Compass Bank. Rather, both parties have entered into this Agreement to resolve voluntarily the claims asserted by the United States in order to avoid protracted and costly litigation.

II. SUMMARY OF THE UNITED STATES' ALLEGATIONS

5. In 2003, Federal Reserve Board ("the Board") examiners conducted a compliance examination of Compass Bank. The examination included a review of Compass Bank's indirect automobile lending program, in which the Bank establishes a "buy rate" at which it will agree to purchase loans made by various automobile dealerships to customers who are buying automobiles through those dealerships. Examiners found that DFS, a component within Compass Bank that conducted all of the Bank's indirect automobile lending, distributed to dealerships various forms of "rate sheets" which stated "Add

¹ The "buy rate" is a rate at which Compass Bank agrees to acquire a contract from the dealership. This rate is expressed in the form of a percentage.

1.00% to rates for co-signed loans (other than husband & wife)” or, in some instances, “Add 2.00% to rates for co-signed loans (other than husband & wife).” In the case of DFS’ low-documentation approval program, some rate sheets stated “No co-signers. (Other than husband and wife).” The Board found reasonable cause to believe the adoption of this pricing program and dissemination of the rate sheets constituted a pattern or practice of disparate treatment in violation of Section 701(a) of the ECOA and Section 202.4(a) of the Board’s Regulation B. Following its determination, and pursuant to 15 U.S.C. §1691e(g) of the ECOA, the Board referred the matter to the Attorney General on January 18, 2005, for appropriate enforcement action.

6. Compass Bank’s indirect automobile lending operation was conducted through DFS, which, at the time, operated from two loan centers: one in Birmingham, Alabama (“East DFS Region”), and the other in Tucson, Arizona (“West DFS Region”). These two regional DFS loan centers were responsible for underwriting and originating all of Compass Bank’s indirect automobile loans. The interest rate at which DFS purchased a loan from an automobile dealer was called the buy rate. The DFS written policies and procedures directed loan officers to set buy rates for loans on the basis of specified credit-risk and competitive factors.
7. Based on information obtained during the Board’s examination and through documents that the United States received subsequently from Compass Bank, the United States alleges that, between May 2001 and May 2003, Compass Bank treated co-applicants not married to each other (“non-spousal”) less favorably than similarly-situated co-applicants

who were married to each other (“spousal”). The United States also alleges:

- a. Compass Bank provided written instructions in the form of rate sheets to over 700 automobile dealerships in both of its regional loan centers. The intent of those rate sheets was to provide guidance to automobile dealers on interest rates that Compass Bank would accept for automobile loans. Some rate sheets explicitly prohibited non-spousal co-applicants from involvement in certain loan programs, while other rate sheets stated that an additional 1 to 2 percentage points should be added to the projected buy rate whenever joint applicants on co-signed loans were not married to each other.
 - b. Compass Bank charged, on average, higher buy rates to non-spousal co-applicants than to similarly-situated spousal co-applicants. The differences in the buy rates between the automobile loans made to spousal co-applicants and those made to non-spousal co-applicants cannot be explained fully by factors unrelated to marital status.
8. The United States further alleges that the Bank’s method of setting buy rates was not justified by business necessity and discriminated against consumers with respect to credit transactions, on the basis of their marital status, in violation of ECOA, 15 U.S.C. §1691(a)(1), and Regulation B, 12 C.F.R. 202.4 and 202.6.
9. The parties have agreed, as indicated by the signatures below, that this matter should be resolved without the time and expense of a trial, and have entered into this Agreement voluntarily to resolve the claims asserted by the United States and avoid the risks and

burdens of litigation.

III. COMPASS BANK'S RESPONSE

10. In May 2003, Compass Bank learned that rate sheets distributed by DFS to automobile dealers contained language that was inconsistent with Bank and DFS policies, procedures and practices, which stated “Add 1.00% to rates for co-signed loans (other than husband & wife)” or, in some instances, “Add 2.00% to rates for co-signed loans (other than husband & wife).” When this language came to the attention of Compass Bank's compliance and legal personnel, the Bank promptly removed the language from the rate sheets. The Bank also reviewed all rate sheets and policies in all of its lines of business and confirmed that they did not contain any similar language. Additionally, the Bank conducted a statistical analysis to determine whether the rate sheet guidance resulted in different pricing to similarly qualified spousal and non-spousal co-applicants. Finally, the Bank provided additional fair lending training to all lending personnel.

IV. TERMS OF SETTLEMENT

11. The provisions set forth in Sections IV. through VI. herein shall be implemented within ninety (90) days of the effective date² of this Agreement, unless otherwise specified.

A. General Nondiscrimination Injunction

12. Upon the effective date of this Agreement, Compass Bank, including all of its officers and employees, is hereby enjoined from discriminating on the basis of marital status in

² The “effective date” is herein defined as the date that this Agreement is approved and entered by the United States District Court for the Northern District of Alabama.

violation of ECOA. This includes a prohibition on discrimination in the terms or conditions relating to the extension of credit and establishment of buy rates for loans to purchase automobiles.

B. Procedures for Setting Buy Rates

13. Compass Bank represents that it removed the rate sheets in question from circulation at its dealerships beginning on May 22, 2003, and that it promptly instructed the dealerships in its network not to follow the earlier rate sheets. Compass Bank shall continue to distribute to all of the dealerships within its DFS network, and shall continuously use, only rate sheets that do not set or imply different prices for co-applicants based on whether the co-applicants are husband and wife (“marital relationship”). Compass Bank shall provide a sample copy of these rate sheets to the United States within fifteen (15) days of the effective date of this Agreement.
14. Compass Bank has amended its credit policy for indirect automobile loans to explicitly prohibit the use of joint credit as a proxy for marital status or relationship. To the extent the guidelines make underwriting distinctions based on whether a co-applicant loan is a “guarantor loan”, there shall be specific written criteria for determining such “guarantor” status that do not differentiate among applications on the basis of marital relationship. Compass Bank shall continue to use underwriting guidelines that meet these criteria.
15. Within thirty (30) days of the effective date of this Agreement, Compass Bank shall distribute its amended credit policy for indirect automobile loans to all Compass Bank officers and employees who participate, in any manner, in the setting of buy rates,

including all underwriters in the DFS centers. Compass Bank shall provide the amended credit policy to the United States prior to distribution.

C. Equal Credit Opportunity Training Program

16. During the term of this Agreement, Compass Bank shall provide annual equal credit opportunity training to officers and employees, including but not limited to management personnel within Compass Bank's DFS offices, who participate, in any manner, in the setting of buy rates ("essential persons"). During the equal credit opportunity training program, Compass Bank shall provide to each essential person: (a) a copy of this Agreement; and (b) training on (i) the terms of this Agreement, (ii) the requirements of the Equal Credit Opportunity Act, and (iii) his or her responsibilities and obligations under each.
17. Compass Bank shall secure from each essential person a signed statement (which signature requirement can be satisfied via electronic signature) acknowledging that he or she has received a copy of this Agreement and has completed equal credit opportunity training. These statements shall be substantially in the form of Appendix A (Acknowledgment) and Appendix B (Equal Credit Opportunity Training). During the term of this Agreement, each new essential person, as described above, who begins to participate in any manner in the setting of buy rates and/or interest rate markups, shall be provided with a copy of this Agreement and sign the statement included as Appendix A within thirty (30) days of beginning his or her participation in the setting of buy rates and/or interest rate markups.

18. The equal credit opportunity training shall be conducted by Compass Bank. Any expenses associated with this training program shall be borne by Compass Bank. All training materials used pursuant to the requirements of this Paragraph shall be sent to the United States prior to the initial annual training.

V. MONETARY COMPENSATION

19. Compass Bank shall establish an escrow fund totaling **\$1.75 million (“the Settlement Fund”)** for the purpose of paying damages to persons who may have suffered as a result of Compass Bank’s alleged failure to comply with the Equal Credit Opportunity Act (“Payee Co-Applicants”). The Settlement Fund constitutes a reasonable sum to compensate non-spousal co-applicants whom the United States alleges to have been aggrieved by the discriminatory conduct described above. Compass Bank shall provide written verification of the deposit to the United States within seven (7) days of the effective date of this Agreement. Any interest that accrues shall become part of the Settlement Fund.
20. Payments to Payee Co-Applicants shall be made pursuant to a detailed Methodology used by Compass Bank, which has been approved by the United States. Pursuant to this Methodology, Compass Bank shall pay each pair of Payee Co-Applicants (who Compass Bank has identified to the United States by loan number, name, region and loan category) from the Settlement Fund in the following manner:
- a. For loans originated in the East DFS Region, Compass Bank has identified a total of 1,488 policy loans to Payee Co-applicants (“East Category A”) and a total of

1,613 exception loans to Payee Co-applicants (“East Category B”). Compass Bank shall pay **\$325** to each pair of Payee Co-Applicants in the East Category A and **\$160** to each pair of Payee Co-Applicants in the East Category B.

- b. For loans originated in the West DFS Region, Compass Bank has identified a total of 1,052 policy loans to Payee Co-applicants (“West Category A”) and a total of 2,374 exception loans to Payee Co-applicants (“West Category B”). Compass Bank shall pay **\$460** each pair of Payee Co-Applicants in the West Category A and **\$230** to each pair of Payee Co-Applicants in the West Category B.

21. Payments from the Settlement Fund to Payee Co-Applicants shall be subject to the following conditions:

- a. No Payee Co-Applicant shall be paid any amount from the Settlement Fund until after the execution of a written release of all claims, legal or equitable, which he or she might have against Compass Bank regarding claims asserted by the United States in this lawsuit, so long as such claims accrued prior to the entry of this Agreement. The form of the release is set forth in Appendix C (Release). If Compass Bank receives a Release from only one of the two co-applicants on a loan, Compass Bank shall pay half of the amount listed in Paragraph 20, to the co-applicant who returned the Release.
- b. The total amount to be paid by Compass Bank to the Payee Co-Applicants shall not exceed \$1.75 million plus interest.

22. Within forty-five (45) days from the effective date of this Agreement, the Bank shall mail to each pair of Payee Co-Applicants information about the respective settlement award via a regular mail notification letter to their last known address as reflected in Compass Bank's records, or based upon information provided by the U.S. Postal Service. The Bank shall provide to the United States documentation of such notification. The notification letter shall contain two Releases and a copy of this Agreement, and shall instruct the Payee Co-Applicants to execute the Releases and return them within sixty (60) days to Compass Bank. Upon the return of any such notification letter, the Bank shall mail a second copy of the notification letter to a new address, if one is identified by the United States Postal Service. If the Bank is unable to locate a Payee Co-Applicant after these efforts, it shall so notify the United States. The United States may take whatever steps it deems appropriate to locate a Payee Co-Applicant, and Compass Bank shall cooperate in those efforts.
23. Compass Bank shall issue payment drawn on the Settlement Fund to Payee Co-Applicants in four (4) installments, in the amounts provided for in Paragraph 20 of this Section, according to the following schedule:
- a. Within 135 days of the effective date of this Agreement, Compass Bank shall issue and mail checks to Payee Co-Applicants who execute and return Releases by the 105th day after the effective date of this Agreement;
 - b. Within 225 days of the effective date of this Agreement, Compass Bank shall issue and mail checks to Payee Co-Applicants who execute and return Releases

between the 106th and 195th day after the effective date of this Agreement;

c. Within 315 days of the effective date of this Agreement, Compass Bank shall issue and mail checks to Payee Co-Applicants who execute and return Releases between the 196th and 285th day after the effective date of this Agreement; and

d. Compass Bank shall issue and mail a final installment of checks to Payee Co-Applicants who execute and return Releases between the 286th day after the effective date of this Agreement and 365 days after the last of the original notification letters was mailed. These checks should be mailed within 30 days of the latter date.

24. In the event that an identified Payee Co-Applicant does not return the Release specified in Paragraph 22 to Compass Bank or the United States within one (1) year of the date on which the original notification letter was mailed, any escrow funds remaining shall be returned to Compass Bank. At least fourteen (14) days prior to the return of any remaining money in the escrow fund to Compass Bank, Compass Bank shall provide written notice to the United States of: 1) the total amount of money paid to Payee Co-Applicants from the escrow fund; 2) the total number of Payee Co-Applicants who were compensated and a list thereof; and 3) the amount of the remaining money in the escrow fund which is to be returned to Compass Bank.

VI. ADMINISTRATION

A. Record-Keeping and Reporting Requirements

25. Compass Bank shall retain all automobile loan files submitted by dealers for approval, all documents and notices relevant to the buy rates set for such automobile loans for the term of this Agreement, and any databases containing loan file data. Compass Bank also shall retain all records relating to its compliance with this Agreement for the term of this Agreement, including documents concerning its equal credit opportunity employee training.
26. Upon reasonable written notice to Compass Bank, the United States shall be provided access to any and all records related to compliance with this Agreement, including but not limited to individual automobile loan application files, databases containing loan file data, underwriting guidelines and rate sheets, written acknowledgments of any Compass Bank official or his/her designee pursuant to Paragraph 17, and all records relating to Compass Bank's equal credit opportunity employee training.
27. Compass Bank shall advise the United States in writing within thirty (30) days of receipt of any new written discrimination complaint against the Bank or its employees relating to DFS activities. Compass Bank also shall promptly provide the United States all non-privileged information it may request concerning any such complaint. Within thirty (30) days of the resolution of any such complaint, Compass Bank shall advise the United States of such resolution.

28. Compass Bank shall serve annual reports on the United States for the term of this Agreement.
- a. Compass Bank shall submit an initial annual report containing the signed statements of receipt of this Agreement and attendance at equal credit opportunity training for essential persons, as defined at Paragraph 16. Thereafter, Compass Bank shall include in each annual report the signed statements of new essential persons, as defined at Paragraph 16, verifying that they have received this Agreement and attended equal credit opportunity training.
 - b. Each annual report shall provide a complete account of Compass Bank's efforts to comply with the requirements of this Agreement in the previous year; an objective assessment as to the extent to which each requirement was met; an explanation as to why any particular requirement was not met; and a description of any statistical analyses undertaken, and the results thereof, related to the requirements of this Agreement. In addition, Compass Bank shall attach to the annual report representative copies of rate sheets and training materials.
 - c. Compass Bank shall serve each annual report upon the Chief of the Housing and Civil Enforcement Section,³ by overnight courier, one year after the effective date of this Agreement and two years after the effective date of this Agreement.

³ The reports shall be sent to Chief, Housing and Civil Enforcement Section, Civil Rights Division – NWB 7062, United States Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, Attn: DJ#188-1-2.

B. Retention of Jurisdiction, Modifications, and Remedies for Non-Performance

29. The requirements of this Agreement shall be in effect for two (2) years and ninety (90) days and shall be binding on Compass Bank, including all of its officers and employees. Section IV(A)(12), Section IV(B), and Section V of this Order shall also be binding on Compass Bank's successors in interest. The Court shall retain jurisdiction for the duration of this Agreement to enforce the terms of the Agreement, after which time the case shall be dismissed as to such parties with prejudice. The United States may move the Court to extend the duration of the Agreement in the interests of justice. Each party shall bear its own costs.
30. This Agreement may be modified, extended or terminated at any time, upon approval of the Court, by mutual written agreement of the parties. The parties recognize that there may be changes in relevant and material factual circumstances during the term of this Agreement which may impact the accomplishment of its goals. The parties agree to work cooperatively to discuss any proposed modifications to this Agreement.
31. In the event that any disputes arise concerning the interpretation of or compliance with the terms of this Agreement, the parties shall endeavor in good faith to resolve any such dispute between themselves before bringing it to this Court for resolution. The United States agrees that if it reasonably believes that the Bank has violated any provision of this Agreement, it will provide the Bank written notice thereof and give the Bank thirty (30) days to resolve the alleged violation before presenting the matter to this Court. If the Bank fails to perform in a timely manner any act required by this Agreement, or the Bank

acts in violation of any provision hereof, the United States may move this Court to impose any remedy authorized by law or equity including, but not limited to, an order requiring performance of certain acts or non-performance of certain acts and an award of any damages, costs and/or attorney's fees to the United States.

32. The Bank's compliance with the terms of this Agreement shall fully and finally resolve all claims of the United States relating to the Bank's alleged violation of ECOA, as described in Paragraphs 5-9 of this Agreement, including all claims for equitable relief and monetary damages and penalties.

IT IS SO ORDERED:

This _____ day of _____, 2007.

UNITED STATES DISTRICT COURT JUDGE

Agreed to by the parties as indicated by the signatures of counsel below:

FOR THE UNITED STATES:

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Assistant Attorney General

Civil Rights Division

s/ Charla D. Jackson

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APPENDIX A

ACKNOWLEDGMENT OF RECEIPT OF AGREEMENT

On _____, I received a copy of and have read the Agreement entered by the federal district court in United States v. Compass Bank, Civil Action No. ____ (N.D. Ala.). I have had all of my questions concerning the Agreement and the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691-1691f, answered to my satisfaction.

(Signature)

(Print name)

(Position)

(Date)

APPENDIX B

CERTIFICATION OF EQUAL CREDIT OPPORTUNITY TRAINING

On _____, I attended training on the federal Equal Credit Opportunity Act (“ECOA”). I have had all of my questions concerning ECOA answered to my satisfaction.

(Signature)

(Print name)

(Position)

(Date)

APPENDIX C

RELEASE OF ALL CLAIMS

In consideration of and contingent upon the payment by Compass Bank pursuant to the Agreement entered in United States v. Compass Bank, Civil Action No. _____, in the United States District Court for the Northern District of Alabama, and other good and valuable consideration, I hereby release and forever discharge Compass Bank, including all of its officers, employees, representatives, assignees, and successors in interest, from any and all liability for any claims, legal or equitable, I may have against them arising out of the issues alleged in this action as of the date of the entry of the Agreement. I fully acknowledge and agree that this release of Compass Bank shall be binding on my heirs, representatives, executors, successors, administrators, and assigns.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that I am the person named below and am authorized to execute this release. I further acknowledge that I have read and understand this release and have executed it voluntarily and with full knowledge of its legal consequences.

[Printed name]

Signed this ____ day of _____, 2007.

(Signature)

(Street Address)

(City, State, Zip Code)